

Close-out Memorandum of the
Investigation Regarding
John Montgomery
April 19, 2021



State Attorney's Office
Eleventh Judicial Circuit
Miami-Dade County
June 14, 2022



INTEROFFICE MEMORANDUM

TO: KATHERINE FERNANDEZ RUNDLE DATE: June 14, 2022
State Attorney

FROM: STAFFING/REVIEW TEAM RE: SAO/Case #: 62/21/04/19/005
Deceased/Injured: John Montgomery

Based on the information obtained and reviewed during the course of the investigation, the conclusion of the staffing/review team is the following:

On April 5, 2021 Miami Police were dispatched to the Peace and Love Assisted Living Facility because a patient, John Montgomery, was armed with a rifle, and threatening his caretaker. Officers arrived, ordered Montgomery to drop the rifle, but he refused to surrender the weapon. Police initiated "barricaded subject" protocols. The Special Weapons and Tactics unit responded and commenced negotiations with Montgomery. He was uncooperative and told the police they would have to kill him. Several hours into the standoff, Montgomery exited an apartment and stood on a second-floor landing holding the rifle. Sergeant Elias Rodriguez and Officer Adam Valdes deployed a non-lethal munition (bean bag/super sock). Montgomery was struck, incapacitated, and dropped the rifle. Police were able to secure the weapon and take him into custody. Montgomery was transported to the hospital for the wounds caused by the bean bags. On April 19, 2021 his health deteriorated, and he died at the hospital. It was later determined that at the time he was admitted to the hospital Montgomery was suffering from _____ and terminal _____. An autopsy later revealed Montgomery's death was caused by Atherosclerosis Cardiovascular disease and a contributing cause was injury from the bean bag. Pursuant to 776.012(1) and 776.05, we find that Sgt. Rodriguez and Ofc. Valdes' use of less than lethal force was legally justified. Therefore, no charges will be filed.

The members of the staffing/review team for this case are:

Don L. Horn

Deisy Hernandez

Stephen K. Talpins

Christine Zahralban

Kathleen Hoague

J. Scott Dunn

Approved by State Attorney on this 21 day of June, 2022.

KATHERINE FERNANDEZ RUNDLE
State Attorney





INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: June 14, 2022

FROM: Sandra Miller-Batiste
Assistant State Attorney

RE: POLICE SHOOTING CLOSEOUT MEMO
SAO Case # 62/21/04/19/005

OFFICERS INVOLVED:	Sgt. Elias Rodriguez 01- 29308 MPD Ofc. Adam Valdes 01-41779 MPD
DECEASED:	John Montgomery
DATE & TIME:	Date of Shooting Incident - April 5, 2021 Date of Death - April 19 2021 at 3:34 pm @ JMH
LOCATION:	Peace and Love Assisted Living Facility 520 NW 49th Street, Miami
WEAPONS:	Bean Bags (Non-Lethal Force) – Sgt Rodriguez & Ofc Valdes Rifle 22LR Caliber Mossberg 353 Rifle SN: 515725 - Montgomery
LEAD/REPORTS:	Agent Paulino Garcia, FDLE
CASE #:	FDLE Case #MI-37-0112 MPD Case #210419-0024742
SAO CASE #:	62/21/04/19/005

SUMMARY OF FACTS

On April 5th, 2021 Miami Police were dispatched to 520 NW 49th St, Miami, Florida, Peace and Love Assisted Living Facility. A patient at the facility, later identified as John Montgomery, was armed with a rifle, and threatening his caretaker, Jeudy Mildrene. City of Miami Police Department (MPD) officers responded to the scene where they encountered Mr. Montgomery. Officers ordered Mr. Montgomery to drop the rifle. Mr. Montgomery refused to surrender the rifle, and MPD officers initiated "barricaded subject" protocols.

At approximately 1:55 p.m. an MPD Special Weapons and Tactics (SWAT) Unit responded to the facility. MPD police officers commenced negotiations with Mr. Montgomery by using a Long-Range Acoustic Device (LRAD), cellular phone, and a throw phone. Mr. Montgomery was uncooperative with those efforts and said to the negotiators that the police would have to kill him.

At approximately 4:39 p.m., Mr. Montgomery exited the facility's second-floor apartment and stood on the landing, holding the rifle. MPD SWAT arrest team members Sergeant Elias Rodriguez, Officer Adam Valdes, Officer David Bernal, Officer Eric Guzman, and Officer Henry Vazquez positioned themselves at the bottom of the staircase.

At approximately 4:41 p.m., Sergeant Elias Rodriguez and Officer Adam Valdes fired their weapons and deployed less than lethal force (bean bag/super sock) against Mr. Montgomery. The less-lethal rounds struck Mr. Montgomery on the posterior area of his body. He was incapacitated and dropped the rifle onto the landing. Sergeant Alexander May jumped from the ground floor and retrieved the rifle, while other SWAT team members took Mr. Montgomery into custody. MPD Crime Scene Investigation (CSI) Detective Leonel Garcia processed the scene (MPD Arrest Case #2104050021328).

Mr. Montgomery was arrested and charged with Aggravated Assault with a deadly weapon. He was transported to Jackson Memorial Hospital's (JMH) Ryder Trauma Center, where he was treated and admitted. Mr. Montgomery had superficial wounds to his lower back. It was later determined that when he was admitted to the hospital he had pre-existing medical issues including
and

On Monday, April 19, 2021, two weeks after the incident, at approximately 3:34 p.m., Mr. Montgomery's health deteriorated. He was later pronounced deceased by JMH Dr. Mark Buzzelli. The decedent was not in custody at his time of death, and he suffered from terminal
and

On April 21st, 2021, the medical examiner, Dr. D. Fintan Garavan, performed an autopsy on Mr. Montgomery. He determined that the decedent's cause of death was Atherosclerosis Cardiovascular disease with other significant conditions, and penetrating wounds to the lower back area.

LEGAL ANALYSIS AND CONCLUSION

The role of the State Attorney in this investigation and in conducting this review is limited to determining whether a criminal violation of Florida law has occurred, whether any person may be held criminally responsible, and whether such criminal responsibility can be proven beyond a reasonable doubt in a court of law. The State Attorney does not establish agency policy, procedures, and training requirements. Nor does the State Attorney have any responsibility for determining disciplinary action or pursuing civil litigation in these matters. In other words, given the applicable law, the State Attorney's role is to determine whether the actions of Officer(s) Elias Rodriguez and Adam Valdes constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt.

I have reviewed the Florida Department of Law Enforcement Investigative Summary into the police use of force in this incident. I have also reviewed sworn statements, crime scene reports, autopsy report, lab reports, and other evidence compiled by FDLE under FDLE Case Number MI-27-0167. I find the summary and attachments to be complete, thorough, and consistent with the statements, crime scene evidence, and with my observations at the scene. I adopt and attach the Summary hereto and offer my conclusion based on the results of my investigation and review.

The legal analysis must consider whether the officers' shooting with "less lethal munition" under the circumstances of this case was legally justifiable in accordance with Florida Statutes.

Florida Statute 776.05 provides in pertinent part:

A law enforcement officer...

Need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest; the officer is justified in the use of any force:

- (1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
- (2) When necessarily committed in retaking felons who have escaped; or

Also, the use of less-lethal munition is considered "non-deadly force. See Fl. Stat. 776.06 (2)(a). Additionally, Fl. Stat. 776.06 (2) (b) creates a potential affirmative defense for the officers in this case:

- (1) As applied to a law enforcement officer or correctional officer acting in the performance of his or her official duties, the term "deadly force" means force that is likely to cause death or great bodily harm and includes, but is not limited to:
 - (a) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

(b) The firing of a firearm at a vehicle in which the person to be arrested is riding.

(2)(a) The term “deadly force” does not include the discharge of a firearm by a law enforcement officer or correctional officer during and within the scope of his or her official duties which is loaded with a less-lethal munition. As used in this subsection, the term “less-lethal munition” means a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body.

(b) A law enforcement officer or a correctional officer is not liable in any civil or criminal action arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties.

In this case Mr. Montgomery, was armed with a rifle and posed a threat to the safety of his caregiver and the officers. He refused to comply with the officers' command to put his weapon down and barricaded himself in the facility for over an hour. He refused to cooperate with the negotiators and told the police they would have to kill him. Once he exited the facility with the rifle in his hands, Officers Elias Rodriguez and Adam Valdes shot non-lethal bean bags striking Mr. Montgomery in the lower back and causing him to drop the rifle. This allowed other officers to gain possession of the rifle and place Mr. Montgomery in custody, thus eliminating the threat without the use of deadly force.

Mr. Montgomery was taken to the hospital to be treated for the injuries he received from the bean bags which hit him in the lower back. However, Mr. Montgomery also suffered from and . The medical examiner determined that the cause of death was Atherosclerotic Cardiovascular Disease with other significant conditions. Those conditions were the wounds from the bean bags. While they were not the direct cause of death, the medical examiner determined them to be a contributing factor due to Mr. Montgomery's pre-existing health condition.

Florida law specifically states that a law enforcement officer need not retreat from efforts to make a lawful arrest and the officer is justified in the use of any force which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest. Officers Elias Rodriguez and Adam Valdes were faced with a man who was armed with a rifle and posed an imminent threat of harm to his caregiver and the police officers on the scene. Consequently, the subject officers were justified in using force to make a lawful arrest of Mr. Montgomery given the fact that he was armed, refused to drop his weapon, and stated to the officer that they would have to kill him. Therefore, the use of force here was legally justified under 776.012(1) and 776.05. Furthermore, the force actually used by the officers in discharging “less-lethal munition” is not considered to be a use of deadly force, despite the unintended consequences which resulted in Mr. Montgomery's death two weeks later. See Fl. Stat. 776.06 (2)(a). Finally, the shooting officers were acting in good faith using less-lethal ammunition during and within the scope of their official duties.

The actions of Sergeant Elias Rodriguez and Officer Adam Valdes do not constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt. The use of non-

deadly force with less-lethal munition in this case was legally justified. Consequently, no criminal charges will be filed, and this investigation is closed.

Sandra Miller Batiste

/s/ Sandra Miller Batiste
Assistant State Attorney